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COUNTY OF LOS ANGELES
SPECIAL INVESTIGATIONS DIVISION
CRIMINAL COURTS BUILDING
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GIL GARCETTI, DISTRICT ATTORNEY

December 29, 1992

Captain Donn P. Brooks
Homicide Bureau
Los Angeles County Sheriff's Department
211 West Temple Street
Los Angeles, California 90012

Dear Captain Brooks:

Re: S.I.D. File Number: 100-7378/92-0464
L.A.S.D. File Number: 092-23703-1137-051

The Special Investigations Division of the Los Angeles County District Attorney's Office has concluded its investigation and review of the August 24, 1992, nonfatal shooting of Jeffrey Powell, age 18, by Los Angeles County Sheriff's Department Deputy Jonathan White. District Attorney Senior Investigator [redacted] and the undersigned responded to the scene immediately after the incident was reported to our office. We were briefed at the scene of the shooting by Sheriff's Detective Byron Wisberger. In reaching our conclusion in this matter, we have read and considered the Los Angeles County Sheriff's Department reports regarding the incident, the reports of the interviews with witnesses to the shooting conducted by your office, and additional reports of interviews with several witnesses prepared by our own Bureau of Investigation.

FACTUAL ANALYSIS

On August 24, 1992, at approximately 10:10 a.m., Sheriff's Deputies from the Antelope Valley Sheriff's station were called to respond to a "415--man with a gun" call at a single family residence located at [redacted] Nicole Street in Lancaster. Deputy Jonathan White was one of the first deputies who arrived at the location. At the time the deputy arrived, he met with one of

the residents of the house, [redacted] She informed the deputy that her [redacted] later identified as Jeffrey Powell, was inside her residence armed with a handgun. [redacted] told the deputy that Powell was distraught and was threatening to kill himself.

Within a few minutes, Deputies Keith Edey, David R. Reddish, Dale Detjen, Bradley Feehan and Sergeant Darrel Brown arrived at the house. Deputy White informed Deputy Edey as to the information he had received from [redacted] and approached the open front door of the house. Inside the house, visible from the open doorway, White stated he could see Powell sitting on the back of a couch holding a revolver. White commanded Powell to drop the weapon.

The remaining deputies took positions of cover around the residence. Deputy Reddish assisted a visitor at the house, [redacted], out one of the back windows by cutting through a screen on a window. Meanwhile, for the next several minutes, Deputy White spoke to Powell and demanded that he drop the weapon. Several of the deputies could hear White's commands and Powell's verbal responses. Deputy Reddish stated that he could hear Powell refuse to drop his weapon and tell the deputies to "leave him alone" and to "go away."

Deputy White reported that this verbal confrontation continued for the next ten to twenty minutes. Sergeant Brown requested that a hostage negotiator, a ballistic shield and an ~~ARWIN~~ ARWEN gun[1] be dispatched to the scene. During this time, Powell would not respond to White's commands. He reportedly continued his demand to see his [redacted] When White informed Powell that this would not be possible while Powell was still armed with a weapon, Powell continued to demand to be left alone and refused to drop his weapon. According to Deputy White;

> A After a period of time that I estimated to be probably 15 to 20 minutes uh, he told me, uh, that he was going to shoot himself, that he was gonna put the gun to his head and shoot himself. And during our entire contact the gun had been sitting in his lap, uh, with his hand on the butt of the gun pointed like down toward his leg. And after he told me that he raised the gun out and pointed it in my direction.
> Q And when he did this what was going through your mind at the time?
> A I was in fear for my life and for the safety and lives of the officers.
> Q And what did you do?
> A I fired two rounds from my duty weapon.

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[1] An ~~ARWIN~~ gun is ~~an anti-personnel~~ device which shoots a plastic projectile.
ARWEN A NON-LETHAL



One of the Deputy White's rounds struck Powell in the stomach area. Powell fell to the floor and was immediately handcuffed by several of the deputies. The gun, a .357 Smith and Wesson revolver, was removed from the immediate area by Deputy Reddish. Reddish reported that at the time the gun was recovered, the gun was cocked and there was a single live round in the chamber.

In addition to the deputies who arrived at the scene, several civilian witnesses were interviewed by both the Sheriff's and Bureau of Investigation Investigators. [redacted] reported that Powell had been a former [redacted] of hers and that they had broken up several months before the shooting incident. According to [redacted] Powell had become obsessed with her and had become violent toward her. She reported that Powell had vandalized her car and continually threatened her while she was at work. At least two prior sheriff's department reports had been taken concerning the prior confrontations between Powell and [redacted] [redacted] reported that she had obtained a temporary restraining order against Powell, but had yet served the court order. In a separate Simi Valley Police Department report in July, 1992, Powell was reportedly detained and placed in a hospital for a possible suicide attempt. Powell reportedly resisted his apprehension and arrest in that incident.

According to [redacted] on August 24, at about 9:30 a.m, Powell came over to her house, unannounced. At that time, [redacted] was with a friend of hers, [redacted] A verbal confrontation developed in which Powell demanded entry into the house by sticking his foot in the doorway and refusing to leave. He demanded to talk with [redacted] Once inside the residence, Powell pulled a revolver from underneath his clothing and threatened to kill himself. Apparently, he was distraught over the fact that [redacted] no longer wished to be with him. [redacted] attempted to intervene, however, according to [redacted], Powell pointed the gun at [redacted] [redacted] left the house and called for assistance from a neighbor. [redacted] managed to get to a back bedroom in the house and called for a mutual friend of [redacted] and Powell, [redacted] [redacted] to come over and assist her in disarming Powell. A few minutes later, both [redacted] and [redacted] arrived at the house. [redacted] and [redacted] attempted to get the gun away from Powell. They were unsuccessful. During this confrontation, [redacted] and [redacted] observed Powell place at least one live round in the revolver. It was at this time, sheriff's deputies arrived at the residence.

Both [redacted] and [redacted] were interviewed. [redacted] described the initial confrontation with Powell and reported the fact Powell threatened him with the gun. [redacted] also indicated that he observed the gun in Powell's hands and, in fact, struggled with Powell in a futile effort to disarm him.

After Powell was apprehended, he was charged and pled guilty to; Assault with a Deadly Weapon, in violation of Penal Code Section 245; Burglary, in violation of Penal Code Section 459; and Brandishing a Firearm, in violation of Penal Code Section 417. As of this date, Powell is awaiting sentencing in Antelope Valley Superior Court in case number MOO48740.

LEGAL ANALYSIS

> The killing of another person in self-defense is justifiable and not unlawful when the person who does the killing honestly and reasonably believes:
>
> 1. That there is imminent danger that the other person will kill him or cause him great bodily injury; and
>
> 2. That it was necessary under the circumstances to kill the other person to prevent death or great bodily injury to himself.
>
> In order to justify killing another person in self-defense, actual danger or great bodily injury is not necessary. On the other hand, a mere fear of death or great bodily injury is not sufficient. California Jury Instructions--Criminal (CALJIC) 5.12

In addition, the law in California states:

> It is lawful for a person who is being assaulted to defend himself from attack if, as a reasonable person, he has grounds for believing and does believe that bodily injury is about to be inflicted upon him. In doing so, such person may use all force and means which he believes to be reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. CALJIC 5.30

There have been several cases in California which have addressed the legal issues presented in this incident. In 1965, a California appellate court ruled that if one is confronted by the appearance of danger which arouses in his mind, as a reasonable person, an honest conviction and fear that he is about to suffer bodily injury, and if a reasonable person in a like situation seeing and knowing the same facts, would be justified in believing himself in like danger, and if the person so confronted acts in fear and honest conviction, his right of self-defense is the same whether such danger is real or merely apparent. People v. Jackson (1965) 233 Cal. App. 2d 639.

More recently, the Court in People v. Williams (1977) 75 Cal. App. 3d 731, stated that California law permits the use of deadly force in one's self-defense or in the defense of another if it reasonably appears to the person claiming the right of self-defense or the defense of another that he actually and reasonably believed that he was in imminent danger of great bodily injury or death.

The courts recognize that there are occasions where quick decisions must be made and have so indicated:

> Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety. People v. Collins (1961) 189 Cal. App. 2d 575, 589.

CONCLUSION

Deputy White was faced with a situation where he was confronted by an armed, irrational, distraught individual. Powell would not respond to repeated demands to drop his weapon. It appeared clear to all who observed this situation, that Powell was about to commit suicide. He had demonstrated his dangerousness by his prior immediate threats to [redacted] and to himself. In spite of the pleas of his friend, [redacted] Powell refused to relinquish his weapon. He continually demanded to see [redacted] although he would not drop the gun. His responses to White's commands were disjointed and irrational. There was an air of futility and finality in his manner and tone. In fact at one point, White stated that Powell said that he did not want to be "5150'd" by the police again.[2] One could reasonably conclude that Powell did not desire to leave the house alive that day.[3]

When Powell raised his gun, White had to decide within an instant whether or not Powell would fire upon the deputy or himself. We cannot conclude that White's professed fear for his safety and the safety of the other individuals who surrounded the house, was unreasonable. In confronting

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[2]The term "51-50" refers to an involuntary commitment for treatment and observation under Welfare and Institutions Code Section 5150. Apparently, during the preceding three months, Powell had been detained and taken by police authorities to county mental health facilities for such observations and treatment, but had been released.

[3]In Jeffrey Powell's statement to Sheriff's Department Investigators three weeks after the incident, Powell admitted that he intended to commit suicide that day.

an irrational, armed gunman, White concluded that the threat was immediate and apparent. Given this set of facts, we do not disagree.

In view of our factual and legal analysis of the circumstances surrounding this shooting, we decline to take further action in this matter and consider the case to be closed.

Very truly yours,

GIL GARCETTI
District Attorney

FRANK E. SUNDSTEDT
Assistant District Attorney

By

JOHN K. SPILLANE
Deputy District Attorney

c: Deputy Jonathan White